ONTARIO NONPROFIT NETWORK

POWERED BY DATA

January 28, 2021

Patricia Kosseim
Information and Privacy Commissioner (IPC) of Ontario
2 Bloor Street East, Suite 1400
Toronto, ON, M4W 1A8
By email: consultation@ipc.on.ca

**Data Policy Coalition Response
to IPC Strategic Priority Setting Consultation (Discussion Paper)**

Dear Patricia Kosseim,

We are writing on behalf of the Ontario Nonprofit Network (ONN), Powered By Data, and the sector's Data Policy Coalition in response to your consultation paper on five-year strategic priorities for the IPC. Thank you for the opportunity to comment at this important juncture in the development of privacy and data policy in Ontario.

ONN is the independent network for the 58,000 nonprofits in Ontario, focused on policy, advocacy and services to strengthen Ontario's nonprofit sector as a key pillar of our society and economy.

The Data Policy Coalition, convened by Powered By Data, is made up of more than 30 nonprofit organizations, representing service providers, advocacy groups, and funders within the nonprofit sector. We are working together to enhance the nonprofit sector's access to and responsible, ethical use of government-held administrative data to improve social service delivery, impact evaluation, and evidence-based planning for public benefit.

Summary of feedback

1. The nonprofit sector has a complex and multi-faceted relationship to privacy and data issues. Nonprofits should be considered as a distinct group from for-profit companies when planning and consulting on privacy initiatives.
2. The strategic priorities and cross-cutting approaches identified in the consultation paper are well chosen. We support the goals of each priority as outlined.
3. Many nonprofits would be interested in engaging with your office on proposed strategic priorities #3 to 6 ("Access, privacy and youth," "Next-generation law enforcement," and "Trust in virtual health") and we would be pleased to connect you with them.

4. Our coalition would like to work with your office on proposed strategic priorities #1 to 3 ("Advice to the Ontario government on digital service delivery," "Transparency and open government," and "Responsible use of 'data for good.' "). We would be pleased to convene nonprofits on these issues to advance the dialogue.

Introduction

Through the Data Policy Coalition, Powered by Data and ONN have convened nonprofits and charities with an interest in informing policies affecting administrative data sharing among Ontario ministries and nonprofits that deliver services on behalf of government. In the past two years, our coalition has engaged with the Ontario Government on the Ontario Data Strategy, the importance of data-sharing (with an equity lens) during a pandemic, and a proposed legislative framework for the protection of privacy in Ontario's nonprofit and private sectors. Our coalition was pleased to see changes to the Freedom of Information and Protection of Privacy Act (FIPPA) in May 2019, enabling the creation of Data Integration Units to allow for administrative data sharing between ministries and programs. We were also pleased to see Bill 138, schedule 30 passed in November 2019, putting additional safeguards on de-identified private information. Appropriate data-sharing with an equity lens can improve program evaluation, integration, and outcomes, as well as provide a basis for evidence-informed public policy development. We continue to work with government on initiatives that advance this agenda.

The complexity of the nonprofit sector's relationship to data and privacy

The nonprofit sector is often included with the private sector in discussions on privacy law and policy, but our sector has a relationship with data and privacy that is distinct from for-profit corporations. Certainly, like companies, nonprofits are **stewards of personal data**, collected through engagement with **Ontarians as *customers***, as in the sale of goods and services by nonprofit enterprises (e.g., catering social enterprises, gym & swim recreation activities, and theatre performances).

Unlike most companies, nonprofits also engage with **Ontarians as *residents (citizens and newcomers) with the right to public services***, providing programming on behalf of governments (federal, provincial, and municipal) such as women's shelters, children's treatment centres, and community health. Of course, privatization has meant that in many service areas traditionally delivered by nonprofits (such as long-term care, child care, and employment & training programs) are now also being delivered by for-profit companies.

Nonprofits also engage with **Ontarians as *voters, donors, and civic actors***, for example when they engage households as fundraisers, campaigners/advocacy groups, political parties, and community organizers/planners -- in this context, "list management" (i.e., collection and use of personal data) is central to these operations. In many cases, this work is conducted by volunteers.

There are many opportunities to leverage the data generated through nonprofit enterprise, advocacy, and service delivery activities to harmonize and improve programs and services, and to develop better public policies, in the service of community well-being -- "data for good," as it were.

Many nonprofits also work alongside racialized communities, Indigenous communities, people with disabilities, and other groups to ensure public, private, and nonprofit use of data is ethical and appropriate -- in other words, they engage **Ontarians and First Nations (individually and collectively) as *data owners, asserting their ownership and rights*.** For example, civil liberties-focused nonprofits may advocate for appropriate constraints on the use of police record data or facial recognition software. Disability rights groups may advocate for constraints on the use of health information for insurance purposes. As we are all learning, "data is the new oil" in the sense that the flow of data now contributes more to the global economy than the flow of physical goods.[1] There is great wealth being generated in the "attention economy" on the monetization of personal information.[2] As bearers of an equity lens, nonprofits have a role to play as data justice advocates when data governance frameworks are being developed. These advocates must be part of discussions on how personal data may be used for commercial purposes and how artificial intelligence may be used in the context of both the for-profit data economy as well as public programs.[3] To fulfill their role as voices for communities, nonprofits must be at the table in promoting data justice and the protection of privacy in the use of data by all sectors. In this role, nonprofits are advocates against "data for bad," as your paper phrases it (p. 11).

The nonprofit sector in Ontario is vast and diverse, with a corresponding diversity in data management capabilities. Some nonprofits are large, employing hundreds of people and offering programs funded by federal, provincial and municipal governments, as well as perhaps operating subsidiary social enterprises. But most are small -- of the 58,000 nonprofits in Ontario, half have no paid staff,[4] relying exclusively on volunteers to govern and operate their organizations -- and manage their data; of those with paid staff, 50 percent have between one and ten staff.[5] It is

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[1] James Manyika, Susan Lund, Jacques Bughin, Jonathan Woetzel, Kalin Stamenov, and Dhruv Dhingra. "Digital globalization: The new era of global flows." McKinsey Global Institute. February 24, 2016. https://www.mckinsey.com/business-functions/mckinsey-digital/our-insights/digital-globalization-the-new-era-of-global-flows#

[2] For a treatment of this idea, see John Lanchester. "You are the product." London Review of Books. Vol. 39, No. 16. August 2017. https://www.lrb.co.uk/the-paper/v39/n16/john-lanchester/you-are-the-product?CMP=longread_collection&subid=23002428&utm_campaign=The%20Long%20Read%20-%20Collections%202017&utm_medium=Email&utm_source=esp&utm_term=243865

[3] See for example CBC Sunday Magazine. "How Artificial Intelligence could change Canada's immigration and refugee system." August 2019. , https://www.cbc.ca/radio/sunday/november-18-2018-the-sunday-edition-1.4907270/how-artificial-intelligence-could-change-canada-s-immigration-and-refugee-system-1.4908587

[4] Hall, Michael H, et al. Cornerstones of Community: Highlights of the National Survey of Nonprofit and Voluntary Organizations. Government of Canada, 2005, Cornerstones of Community: Highlights of the National Survey of Nonprofit and Voluntary Organizations. (p. 54). www.imaginecanada.ca/sites/default/files/www/en/library/nsnvo/nsnvo_report_english.pdf.

[5] McIsaac, Elizabeth, et al. Shaping the Future: Leadership in Ontario's Nonprofit Labour Force. Ontario Nonprofit Network, Mowat NFP, 2013, Shaping the Future: Leadership in Ontario's Nonprofit Labour Force.

important that this diversity is kept in mind as policy-makers work to update privacy frameworks that will have a significant bearing on the ability of nonprofits to achieve their missions.

The nonprofit sector's relationship with personal data is therefore complex and multi-faceted. In data policy discussions, nonprofits should not be reduced to "non-commercial organizations" (as they are often referred to in data policy conversations) because the term does not adequately capture this complexity.

Our comments on the IPC's proposed strategic priorities

We were pleased to review the consultation document and agree with its overall framing of issues and goals. Certainly the six priorities proposed are relevant, timely, and focused on the biggest challenges related to data and privacy in Ontario today.

There will be many in the nonprofit sector interested in working with your office on the specific issues of "Access, privacy and youth," "Next-generation law enforcement," and "Trust in virtual health." Youth-serving and youth-led organizations, advocates for people who have come into conflict with the justice system, and health care providers and advocates from our sector will likely engage with you directly on this work. These issues are too specific for us to comment on as a coalition but we would be pleased to connect you with organizations working in these areas.

Our Coalition would be interested in working with you on the first three priority areas: "Advice to the Ontario government on digital service delivery," "Transparency and open government," and "Responsible use of 'data for good.' " These are cross-cutting issues that affect a wide range of nonprofits in their roles as service providers, enterprises, employers, and advocates. We have engaged the Ontario government on administrative data sharing, open data, and "data for good" through Ontario's Chief Privacy Officer and directly through ministry staff. We are also developing a data strategy for the nonprofit sector in Ontario; these issues are front and centre in our work.

The question of digital service delivery is connected to the long-standing role nonprofits have played in communities as well as their recent experiences during the pandemic, when many nonprofits "pivoted" in a matter of weeks, offering programs online and by phone that had previously been in-person. This rapid transition was carried out in a decentralized way and there are many lessons for privacy and digital service delivery that our sector can share with government, particularly as it relates to serving vulnerable populations. In addition, digital service delivery could be better informed by leveraging the vast amount of data provided to Ontario ministries by an estimated 6,000 to 15,000 nonprofits as part of transfer payment agreement program reporting. Work has begun on data-sharing arrangements but the full value of this

(p. 12).
theonn.ca/wp-content/uploads/2011/06/ONN-Mowat-Shaping-the-Future-Final-Report.October2013.pdf.

evidence base has yet to be leveraged "for good" in terms of improved program quality, integration, policy development, and ultimately community outcomes.

Our position on the proposed cross-cutting approaches

In addition to strategic priorities, your consultation document suggests four potential cross-cutting approaches:
- Accessibility and equity
- Capacity building (education, research, and advocacy)
- "Visionary but pragmatic" (considering the full range of potential future paths, while learning from other jurisdictions)
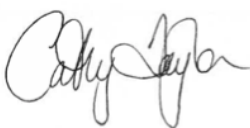- Collaboration and consultation

These are useful approaches and we support their application across the strategic priorities identified. In particular, we would note that there is a compelling case for building greater awareness and capacity among nonprofits to understand privacy issues and opportunities. We would be pleased to partner with your office in exploring a sector-specific education program for Ontario nonprofits. The BC Office of the Information and Privacy Commissioner has set a good example with clear guidance targeted specifically to nonprofits. Organizations like Community Legal Education Ontario (CLEO) are well-positioned to manage an educational program for nonprofits in Ontario.
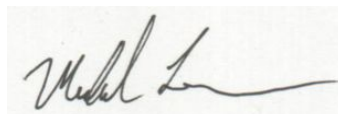
Conclusion

The nonprofit sector plays an important, complex, and multi-faceted role in upholding data privacy, stewarding "data for good," and working alongside communities to advocate for a rights-based and equity-focused approach to data policy and practices. It is important to have nonprofits at the table in helping to shape data and privacy policy and educate Ontarians on related issues, opportunities, and challenges.

We support the strategic priorities you have chosen and we look forward to convening our Data Policy Coalition and other Ontario nonprofits on some or all of the broad issue areas identified in the consultation paper. Thank you for the opportunity to comment..

Sincerely,

Cathy Taylor, Executive Director
Ontario Nonprofit Network

Michael Lenczner, Founding Director
Powered By Data/
on behalf of the Data Policy Coalition